

REMARKS

Claims 1 and 4-12 are in the application.

Reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. 102(b) as being anticipated by the French reference to Bernard et al. are respectfully requested.

It is respectfully submitted that the implant according to the present invention differs from the prior art for the following reasons.

Contrary to the Examiner's interpretation on page 2 of the Office Action, reference numeral 4 in the implant described by Bernard refers to the side facing the front or chest and reference numeral 5 refers to the rear side facing the back. The maximum of the height is somewhat outside of the middle of the half facing the chest, not in the last third facing the chest.

In the implant according to the present invention, the maximum height is located in the last third which faces the back.

However, even if the maximum of the implant described by Bernard were to be located in the last third facing the chest,

and this implant would then have structural features similar to those of the implant according to the present invention, the reference cannot render obvious the present invention as claimed. The structural features of such implants can under no circumstances be taken into consideration separately from the intended implant location. The structural features of the implant described by Bernard clearly do not display the technical teaching of the present invention which resides in that the maximum of the implant height is to be located in the last third which faces the back.

The reference to Bernard does not contain any indication concerning implanting the implant turned by 180° in order to achieve advantages obtained by the present invention.

In this regard, it is submitted that the implant of the reference cannot be implanted turned by 180°. Because of its width, the implant can only be inserted from the chest side between two vertebrae. The seats, 20, 23 for an implanting tool are only constructed in such a way that the implant can be inserted with the wall 5 facing forwardly.

Applicants respectfully submit that, for the reasons set forth above, the present invention as claimed is patentably

distinct over the references relied on by the Examiner.

Therefore, in view of the foregoing, it is submitted that this application is now in condition for allowance and such allowance is respectfully solicited.

Any additional fees or charges required at this time in connection with the application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,




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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 23, 2005.

By: 
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